

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Comest S. Allen, formerly #271585)	
and #2238668,)	
)	C.A. No. 0:05-1781-HMH-BM
Plaintiff,)	
)	OPINION & ORDER
vs.)	
)	
James Hall; Judge Braswell, Clinton City)	
Magistrate; Clinton City Police; and)	
Carroll Baker,)	
)	
Defendants.)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Bristow Marchant, made in accordance with 28 U.S.C. § 636(b) and Local Rule 73.02 DSC.¹ Comest S. Allen (“Allen”), a state prisoner proceeding pro se, filed a complaint pursuant to 42 U.S.C.A. § 1983 (West 2003), raising issues related to the living conditions in the jail. Magistrate Judge Marchant recommends that Allen’s claims be dismissed without prejudice and without issuance and service of process. Magistrate Judge Marchant found that Allen had “struck out” under the Prisoner Litigation Reform Act (“PLRA”) of 1996 and failed to allege that he “is under imminent danger of serious physical injury.” 28 U.S.C.A. § 1915(g) (West Supp. 2005). Accordingly, Magistrate Judge Marchant concluded that Allen could not proceed without payment of the filing fee and other

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

court costs. (Report at 2-3.) Allen filed objections to the Report and Recommendation.

Allen argues that his previous filings were not frivolous and should not have been counted as strikes under § 1915(g).

Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendations of the Magistrate Judge, the court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court finds Allen's objection without merit for the reasons stated in dismissing Allen's civil action numbers 0:00-3162, 0:03-590, and 0:03-591. Therefore, the court adopts and incorporates herein the Report and Recommendation, and dismisses Allen's complaint without prejudice and without issuance and service of process.

Therefore, it is

ORDERED that Allen's complaint is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
August 22, 2005

NOTICE OF RIGHT TO APPEAL

The plaintiff is hereby notified that he has the right to appeal this order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.